

ELLEN F. ROSENBLUM
Attorney General
MICHELLE ENFIELD #152293
KRISTEN E. HOFFMEYER #085338
Senior Assistant Attorneys General
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
Telephone: (503) 947-4700
Fax: (503) 947-4791
JAMES S. SMITH #84093
Senior Assistant Attorney General
Department of Justice
100 SW Market Street
Portland, OR 97201
Telephone: (971) 673-1880
Fax: (971) 673-5000
Email: michelle.enfield@doj.oregon.gov
kristen.hoffmeyer@doj.oregon.gov
james.s.smith@doj.oregon.gov

Attorneys for Defendants Tomy Ackom as Personal Representative for the Estate of Frederick Ackom, Bain, Berning, Crawford, Dorman, Fredrickson, Glover, Hurley, McCafferty, McCullough, McLain, Nelson, O'Donnell, Pecyna, Perske, Renfrow, Sasser, and Sundstrom

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

FRANK GABLE,

Plaintiff,

v.

FREDERICK ACKOM, PAUL BAIN,
KENNETH PECYNA, LOREN GLOVER,
WILLIAM PIERCE, LYNN FREDRICKSON,
JOHN SALLE, TERRY CRAWFORD,
STEVEN SASSER, KENT MCLAIN, DEAN
PERSKE, DARRELL BERNING, DENNIS
FOX, MICHAEL MCCULLOUGH, GUY
DORMAN, MARK RANGER, ROBERT
SUNDSTROM, EMIL BRANDAW,
THOMAS MASON, DENNIS O'DONNELL,

Case No. 6:24-cv-01131-AA

STATE DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S AMENDED COMPLAINT

DEAN LEE RENFROW, KARL NELSON,
JOHN MCCAFFERTY, AND MICHAEL
HURLEY,

Defendants.

For their Answer to Plaintiff's Amended Complaint, defendants Ackom, Bain, Berning, Crawford, Dorman, Fredrickson, Glover, Hurley, McCafferty, McCullough, McLain, Nelson, O'Donnell, Pecyna, Perske, Renfrow, Sasser, and Sundstrom (hereinafter State Defendants) hereby admit, deny, and allege as follows:

1.

In response to introductory paragraphs 1-8, State Defendants admit Plaintiff was incarcerated for the 1989 murder of Michael Francke and Plaintiff's associated convictions were overturned in 2019. State Defendants deny all other allegations in paragraphs 1-8.

2.

In response to the jurisdiction and venue paragraphs 9-11, State Defendants admit this court has jurisdiction and venue is proper, but deny all other allegations.

3.

State Defendants admit the allegations in paragraph 12 that Plaintiff was incarcerated and spent time on supervised release, and deny all remaining allegations in paragraph 12.

4.

Paragraph 13 pertains to other defendants and therefore does not require a response from State Defendants.

5.

State Defendants admit the allegations in paragraph 14 that they were employed by the Oregon State Police. To the extent paragraph 14 pertains to other defendants, no response is required from State Defendants. All other allegations are denied.

6.

Paragraphs 15-22 pertain to other defendants and do not require a response from State Defendants. To the extent a response is required, State Defendants deny.

7.

In response to paragraph 23, State Defendants admit Michael Hurley was employed by the Oregon State Police but denies the remaining allegations.

8.

State Defendants deny the allegations in paragraph 24.

9.

Paragraph 25 contains legal conclusions to which no response is required. To the extent a response is required, State Defendants deny.

10.

In response to paragraphs 26-36, State Defendants admit that Michael Francke was the director of the Oregon Department of Corrections, Francke was stabbed on January 17, 1989 and the stab wounds resulted in his death, Francke's office was located in the Dome Building, Francke's car door was found standing open on the evening of January 17, 1989, Wayne Hunsaker was employed as a custodian at the Oregon State Hospital, Hunsaker was a witness to Francke's murder, Hunsaker observed two people facing each other, then one went toward the Dome Building and one ran off. State Defendants deny the remaining allegations in paragraphs 26-36.

11.

In response to paragraph 37, State Defendants admit that they were involved in the investigation into Francke's murder, but deny the remaining allegations.

12.

State Defendants deny the allegations in paragraphs 38 and 39.

13.

In response to paragraphs 40-44, State Defendants admit that Oregon State Police led the investigation into Francke's murder, investigators collected fingerprints and footwear impressions at the crime scene, the murder weapon was not identified, and the investigation was detailed and thorough. To the extent this paragraph contains allegations against other defendants, no response is required. State Defendants deny all other allegations in paragraphs 40-44.

14.

In response to paragraphs 45-49, State Defendants admit the allegation that John Crouse said he killed Francke and Crouse was investigated. State Defendants deny all remaining allegations in paragraphs 45-49.

15.

In response to paragraphs 50-57, State Defendants admit Timothy Natividad was investigated. State Defendants deny the allegation in paragraph 57. State Defendants are without sufficient information to form a belief as to the truth of the remaining allegations and therefore deny.

16.

State Defendants deny the allegations in paragraphs 58-82.

17.

In response to paragraphs 83-103, State Defendants admit that Plaintiff was investigated, which included conducting interviews and polygraphs. State Defendants deny the remaining allegations in paragraphs 83-103.

18.

In response to paragraphs 104-108, State Defendants admit that the murder weapon was never identified. State Defendants deny the remaining allegations in paragraphs 104-108.

19.

In response to paragraphs 109-112, State Defendants admit Plaintiff was arrested for the murder of Michael Francke, Plaintiff was criminally charged with the murder of Francke by a grand jury indictment, and Plaintiff was incarcerated for that murder. State Defendants deny the remaining allegations in paragraphs 109-112.

20.

In response to paragraphs 113-120, State Defendants admit Plaintiff was convicted by the jury on all counts, Plaintiff was subsequently sentenced to life without parole, the State sought the death penalty, the jury did not make the findings necessary for the death penalty, and the jury decided against allowing Plaintiff parole. State Defendants deny the remaining allegations in paragraphs 113-120.

21.

In response to paragraphs 121-128, State Defendants admit that some people interviewed during the course of the Francke murder investigation have changed their stories, Plaintiff did file a petition and amended for a writ of habeas corpus, and affidavits were submitted during the course of the habeas corpus litigation. State Defendants admit that Magistrate Judge Acosta entered an Opinion and Order on April 18, 2019. That Opinion and Order is a written document which speaks for itself and State Defendants deny any allegations inconsistent with that Opinion and Order. State Defendants admit that the Ninth Circuit Court of Appeals entered an Opinion on September 29, 2022. That Opinion is a written document which speaks for itself and State Defendants deny any allegations inconsistent with that Order.

22.

In response to paragraphs 129-136, State Defendants deny Plaintiff was wrongfully convicted, deny Plaintiff was wrongfully incarcerated, and deny Plaintiff is “targeted” by Defendants. State Defendants lack sufficient knowledge or information to form a belief about the truth of the remaining allegations in paragraphs 129-136 and therefore deny.

23.

In response to paragraph 137, State Defendants incorporate their responses to Plaintiff's complaint.

24.

State Defendants deny the allegations in paragraphs 138-147.

25.

In response to paragraph 148, State Defendants incorporate their responses to Plaintiff's complaint.

26.

In response to paragraphs 149-154, State Defendants admit Plaintiff's criminal proceedings were terminated in his favor. State Defendant deny all remaining allegations in paragraphs 149-154.

27.

In response to paragraph 155, State Defendants incorporate their responses to Plaintiff's complaint.

28.

State Defendants deny the allegations in paragraphs 156-162.

29.

In response to paragraph 163, State Defendants incorporate their responses to Plaintiff's complaint.

30.

State Defendants deny the allegations in paragraphs 164-167.

31.

In response to paragraph 168, State Defendants incorporate their responses to Plaintiff's complaint.

32.

In response to paragraphs 169-174, State Defendants admit Plaintiff's criminal prosecution was terminated in his favor. State Defendants deny all remaining allegations in paragraphs 169-174.

33.

In response to paragraph 175, State Defendants incorporate their responses to Plaintiff's complaint.

34.

State Defendants deny the allegations in paragraphs 176-180.

35.

In response to paragraph 181, State Defendants incorporate their responses to Plaintiff's complaint.

36.

State Defendants deny the allegations in paragraphs 182-188.

37.

In response to paragraph 189, State Defendants incorporate their responses to Plaintiff's complaint.

38.

In response to the allegations in paragraphs 190-195, State Defendants admit Plaintiff was arrested on an arrest warrant on April 8, 1990. State Defendants deny all other allegations in paragraphs 190-195.

39.

In response to paragraph 196, State Defendants incorporate their responses to Plaintiff's complaint.

40.

State Defendants deny the allegations in paragraphs 197-202.

41.

In response to paragraph 203, State Defendants incorporate their responses to Plaintiff's complaint.

42.

State Defendants deny the allegations in paragraphs 204-211.

Except as expressly admitted herein, State Defendants deny each and every allegation alleged in Plaintiff's First Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

Failure to State a Claim (State Law Claims)

43.

Plaintiff's state law claims for relief fail to allege ultimate facts necessary to state a claim or claims.

SECOND AFFIRMATIVE DEFENSE

Failure to State a Claim (Federal Claims)

44.

Plaintiff's federal law claims for relief fail to state a claim or claims upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

Probable Cause

45.

Defendants' conduct, as alleged, was supported by probable cause.

FOURTH AFFIRMATIVE DEFENSE

Qualified Immunity - Law Unsettled

46.

Plaintiff's claims are based upon actions of the defendants about which the law was unsettled at the time, and did not violate any clearly established legal right(s), and are therefore barred by the Doctrine of Qualified Immunity.

FIFTH AFFIRMATIVE DEFENSE

Qualified Immunity - Good Faith

47.

Plaintiff's claims are based on actions of the defendants, which actions were taken in good faith and without malice, and are therefore barred by the Doctrine of Qualified Immunity.

SIXTH AFFIRMATIVE DEFENSE

Absolute Immunity

48.

Defendants are absolutely immune from plaintiff's claims to the extent they arise from defendants' testimony as witnesses in court, including before the grand jury, and all preparatory activities inextricably tied thereto, regardless of whether such activities are described as a conspiracy against plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

Statute of Limitations / Statute of Ultimate Repose

49.

Most of plaintiff's claims are subject to dismissal as untimely as barred by the applicable statute of limitations and/or statute of ultimate repose.

NINTH AFFIRMATIVE DEFENSE

Oregon Tort Claims Act Limitations

50.

Plaintiff's state claims are all subject to the Oregon Tort Claims Act and the procedures, limitations, and immunities contained in ORS 30.260 et seq., including but not limited to the requirement that separate and timely Tort Claims Notices be provided within 180 days of the alleged actions on which each claim for relief is based, and the requirement that the timely giving of such Tort Claims Notices must be pled in the Complaint.

TENTH AFFIRMATIVE DEFENSE

Tort Claim Liability Limit

51.

Plaintiff is barred from seeking damages in excess of those provided by ORS 30.271.

ELEVENTH AFFIRMATIVE DEFENSE

No Punitive Damages Available Against

Public Body and its Officers (State Law Claims)

52.

The real party in interest for plaintiff's state law claims against defendants is the state of Oregon. Plaintiff is barred from seeking punitive damages on any state law claims pursuant to ORS 30.269(1).

WHEREFORE, having fully responded to Plaintiff's First Amended Complaint, State Defendants request judgment in their favor and against Plaintiff with an award of costs and attorney fees under ORS 20.105 and/or 42 U.S.C. § 1988.

DATED December 5, 2024.

Respectfully submitted,

ELLEN F. ROSENBLUM
Attorney General

s/ Michelle Enfield

MICHELLE ENFIELD #152293
KRISTEN E. HOFFMEYER #085338
JAMES S. SMITH #84093
Senior Assistant Attorneys General
Trial Attorney
Tel (503) 947-4700
Fax (503) 947-4791
michelle.enfield@doj.oregon.gov
kristen.hoffmeyer@doj.oregon.gov
james.s.smith@doj.oregon.gov
Of Attorneys for Defendants Ackom, Bain,
Berning, Crawford, Dorman, Fredrickson,
Glover, Hurley, McCafferty, McCullough,
McLain, Nelson, O'Donnell, Pecyna, Perske,
Renfrow, Sasser, and Sundstrom

CERTIFICATE OF SERVICE

I certify that on December 5, 2024, I served the foregoing STATE DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED COMPLAINT upon the parties hereto by the method indicated below, and addressed to the following:

Megan Pierce
Renee Spence
Rachel Brady
Loevy & Loevy
311 N. Aberdeen St., 3rd Floor
Chicago, IL 60607
Of Attorneys for Plaintiff

☐ HAND DELIVERY
☐ MAIL DELIVERY
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX)
☐ E-MAIL
☒ E-SERVE

Rebeca A Plaza
Aaron Hisel
Capitol Legal Services, LLC
901 Capitol St NE
Salem, OR 97301
Of Attorneys for Defendant Thomas Mason

☐ HAND DELIVERY
☐ MAIL DELIVERY
☐ OVERNIGHT MAIL
☐ TELECOPY (FAX)
☐ E-MAIL
☒ E-SERVE

s/ Michelle Enfield
MICHELLE ENFIELD #152293
JAMES S. SMITH #840932
KRISTEN D. HOFFMEYER #085338
Senior Assistant Attorneys General
Trial Attorneys
Tel (503) 947-4700
Fax (503) 947-4791
michelle.enfield@doj.oregon.gov
James.S.Smith@doj.oregon.gov
kristen.hoffmeyer@doj.oregon.gov
Of Attorneys for Defendants Bain, Berning,
Crawford, Dorman, Fredrickson, Glover, Hurley,
McCafferty, McCullough, McLain, Nelson,
O'Donnell, Pecyna, Perske, Renfrow, Sasser,
Sundstrom, and Tomy Ackom